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Attorneys for Defendant,
WALMART, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DONNA LIMA, an individual,

Plaintiff,

vs.

WALMART, INC., a Delaware
corporation; DOE 1 (STORE
MANAGER); and DOES 2-50, inclusive,

Defendants.

CASE NO.

**DEFENDANT WALMART INC.'S
NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
§§1332, 1441, 1446 (DIVERSITY)
AND DECLARATION OF PILAR
TORRES, ESQ.**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant, WALMART, INC., (“Defendant”), a Delaware Corporation, hereby removes this action from Superior Court of the State of California, County of Merced to the United States District Court for the Eastern District of California, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 on the basis of diversity.

This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) on the grounds that complete diversity exists between all parties and the amount in

1 controversy exceeds the sum of \$75,000, exclusive of interest and costs. Plaintiff
2 Donna Lima is a resident, citizen and domiciliary of the State of California.
3 Defendant is a Delaware corporation with its principal place of business in the State
4 of Arkansas.

5 **INTRODUCTION**

6
7 1. On March 19, 2024, plaintiff Donna Lima (“Plaintiff”) commenced this
8 action by filing a complaint in the Superior Court of the State of California in and for
9 the County of Merced, entitled *Donna Lima, an individual, v. Walmart, Inc., a*
10 *Delaware corporation, DOE 1 (STORE MANAGER) and DOES 2 through 50,*
11 *inclusive,”* as Case Number 24CV-01205. Plaintiff alleges causes of action for
12 negligence and premises liability arising out of an incident that is alleged to have
13 occurred on April 2, 2022, in Merced, California.

14
15 2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings
16 and documents filed and served to date on Defendant in this action are attached
17 hereto, collectively, as **Exhibit A**.

18 3. Plaintiff’s Complaint was served on Defendant on July 23, 2024.
19 Plaintiff served its response to Statement of Damages on July 23, 2024. This Notice
20 of Removal is thus timely pursuant to 28 U.S.C. § 1446(b) because it is being made
21 within thirty (30) days of service of the pleading which made the case become
22 removeable.

23
24 4. This Notice of Removal is also timely under 28 U.S.C. § 1446(b) since
25 it is being filed within one (1) year of the commencement of this action.

26 **BASIS FOR REMOVAL**

27 5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332,
28 which confers original jurisdiction of “all civil actions where the matter in

1 controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs,
2 and is between ... citizens of different States and in which citizens or subjects of a
3 foreign state are additional parties[.]”

4 6. At the time of filing his complaint, Plaintiff was a resident and citizen of
5 the State of California, County of Merced. (Torres Dec., ¶ 3.)

7 7. Defendant is a citizen of the Delaware where it was incorporated with
8 its principal place of business in the State of Arkansas. (Id. at ¶ 4.)

9 8. The defendants identified as “DOE 1 (STORE MANAGER)” and
10 “Does 2 through 50” in Plaintiff’s Complaint are merely fictitious parties who have
11 not been identified.

12 9. The inclusion of “Doe” defendants in the state court Complaint has no
13 effect on removability. In determining whether diversity of citizenship exists, only
14 the named defendants are considered. (See *Newcombe v. Adolf Coors Co.*, 157 F.3d
15 686, 690-91 (9th Cir. 1998); see also *Olive v. Gen. Nutrition Ctrs., Inc.*, No. 2:12-cv-
16 04297-ODW, 2012 WL 2006389, at *1 (C.D. Cal. June 5, 2012); *Marsikyan v.*
17 *Porsche Cars N. Am., Inc.*, No. CV 11-09411 SJO, 2012 WL 280585, at *2 (C.D.
18 Cal. Jan. 30, 2012).

20 10. In determining whether the parties are diverse under 28 U.S.C. §
21 1441(b), “the citizenship of defendants sued under fictitious names shall be
22 disregarded.” (See also, *Goldsmith v. CVS Pharmacy, Inc.*, CV 20-0750-AB (JCx),
23 2020 WL 1650760 (C.D. Cal. April 3, 2020); *Soliman v. Philip Morris Inc.*, 311 F.3d
24 966, 971 (9th Cir. 2002)). The presumption remains that Congress said what it meant
25 and meant when it said when it wrote 28 U.S.C. § 1441(b) to require that the
26 citizenship of fictitious defendants be ignored when considering diversity
27 jurisdiction. The Ninth Circuit was clear when it indicated the same. (See *Soliman*,
28

1 311 F.3d at 966.) The parties are accordingly completely diverse, and jurisdiction is
2 proper.

3 11. Plaintiff's Complaint does not specify the amount of damages sought by
4 way of his action. Pursuant to California Code of Civil Procedure §§ 425.10 and
5 425.11, a plaintiff in a personal injury action is not permitted to include a specific
6 damages prayer in her complaint.
7

8 12. Plaintiff served its response to Statement of Damages on July 23, 2024,
9 which claimed at least \$1,000,000.00 in general damages, and at least \$1,000,000.00
10 in special damages. (Id. at ¶ 2.) Therefore, the amount of damages exceeds \$75,000.

11 13. This action is a civil action of which this Court has original jurisdiction
12 under 28 U.S.C. § 1332 and is one which may be removed to this Court by
13 Defendant pursuant to the provisions of 28 U.S.C. § 1441(a) in that it is a civil action
14 between citizens of different states and the matter in controversy exceeds the sum of
15 \$75,000, exclusive of interest and costs because Plaintiff has alleged various
16 damages in excess of \$2,000,000.00. (Torres Dec., ¶ 2-4.)
17

18 14. Thus, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, removal of this
19 action from the Superior Court of California, County of Merced to the United State
20 District Court for the Eastern District of California is appropriate.
21

22 15. The removal of this action to this Court is proper under 28 U.S.C. §
23 1441(a) inasmuch as the Superior Court of the State of California, County of
24 Merced, where this action was originally filed, is located within this federal judicial
25 district. Also, both the place of Plaintiff's residence/domicile and the location of the
26 accident at issue are located in the County of Merced in the State of California.
27 (Torres Dec., ¶ 3.)
28

16. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and

1 removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441(a).


2 17. Counsel for Defendant hereby certifies that they will file a true and
3 correct copy of this Notice of Removal with the Clerk of the Superior Court of
4 California, County of Merced, as required by 28 U.S.C. § 1446, and give notice of
5 same to Plaintiff.
6

7 18. No previous application for the relief sought herein has been made to
8 this Court or any other Court.

9 **WHEREFORE**, Defendant hereby removes this action from the Superior
10 Court of the State of California, County of Merced to this Court pursuant to 28
11 U.S.C. §§ 1332, 1441 and 1446.
12

13 DATED: August 14, 2024

O'HAGAN MEYER

14
15
16 By: 
17 David Davidson
18 Pilar Torres
19 Attorney for Defendant,
20 WALMART INC.
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DECLARATION OF PILAR TORRES, ESQ.

I, Pilar Torres, declare as follows:

1. I am an attorney duly authorized and licensed to practice before this Court. I am an attorney with the law firm of O'Hagan Meyer, counsel of record for defendant WALMART, INC., a Delaware Corporation ("Walmart") in the above-captioned matter. The information stated herein is true and correct and of my personal knowledge, unless stated on information and belief. If called as a witness, I could and would testify competently to the matters declared herein.

2. As a result of the subject fall, Plaintiff served its response to Statement of Damages on July 23, 2024, which claimed at least \$1,000,000.00 in general damages, and at least \$1,000,000.00 in special damages.

3. According to the Complaint prepared and submitted by Plaintiff, she resides in Merced, California. I am informed and believe he has been a citizen of the State of California at all relevant times, from the date of the incident up to and including the time she filed his Complaint. The subject accident allegedly occurred on April 2, 2022, at a Walmart store located in Merced, California.

4. Walmart, Inc. is incorporated in Delaware with its principal place of business in the State of Arkansas.

5. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings and documents filed and served to date on Defendant in this action are attached hereto, collectively, as **Exhibit A**.

6. A true and correct copy of Defendant Walmart, Inc.'s Answer is attached hereto as **Exhibit B**.

7. A true and correct copy of Plaintiff's Statement of Damages is attached

1 hereto as **Exhibit C**.

2 8. Plaintiff's Complaint was served on Defendant on July 23, 2024.
3 Plaintiff served its response to Statement of Damages on July 23, 2024. This Notice
4 of Removal is thus timely pursuant to 28 U.S.C. § 1446(b) because it is being made
5 within thirty (30) days after service of the pleading which made the case become
6 removable.
7

8 I declare under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct to the best of my knowledge.
10

11 Executed on August 14, 2024.
12

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15 Pilar Torres, Declarant
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EXHIBIT A

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- ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3

SHORT TITLE: DONNA LIMA vs. WALMART, INC., et. al.

CASE NUMBER:

ATTACHMENT (Number): _____

(This Attachment may be used with any Judicial Council form.)

COMPLAINT - ATTACHMENT PAGE

DOE 1 (STORE MANAGER); and DOES 2-50, inclusive.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page _____ of _____

(Add pages as required)

SHORT TITLE: DONNA LIMA vs. WALMART, INC., et. al.

CASE NUMBER:

4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

- a. ☒ except defendant (name): WALMART, INC.

(1) ☐ a business organization, form unknown.

(2) ☒ a corporation.

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- c. ☐ except defendant (name):

(1) ☐ a business organization, form unknown.

(2) ☐ a corporation.

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- b. ☐ except defendant (name):

(1) ☐ a business organization, form unknown.

(2) ☐ a corporation.

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- d. ☐ except defendant (name):

(1) ☐ a business organization, form unknown.

(2) ☐ a corporation.

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

- a. ☒ Doe defendants (specify Doe numbers): 26-50

were the agents or employees of other
named defendants and acted within the scope of that agency or employment.

- b. ☒ Doe defendants (specify Doe numbers): 1-25
plaintiff.

are persons whose capacities are unknown to

7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.

b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.

c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.

d. ☐ other (specify):

9. ☐ Plaintiff is required to comply with a claims statute, and

a. ☐ has complied with applicable claims statutes, or

b. ☐ is excused from complying because (specify):

SHORT TITLE: DONNA LIMA vs. WALMART, INC., et. al.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☐ Other (*specify*):

11. Plaintiff has suffered (*check all that apply*)

- a. ☒ wage loss.
- b. ☒ loss of use of property.
- c. ☒ hospital and medical expenses.
- d. ☒ general damage.
- e. ☒ property damage.
- f. ☒ loss of earning capacity.
- g. ☒ other damage (*specify*): Prejudgment interest and interest on damages including but not limited to under Civil Code Sections 3287, 3288, 3291 and/or as allowed by law, common law or otherwise. Other damages, including loss of profits and special damages, unknown at this time which Plaintiff will prove at time of trial.

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages.
- (2) ☐ punitive damages.
- b. The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):
- (1) ☒ according to proof.
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: 3/19/24

Lauren A. Landau, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: DONNA LIMA vs. WALMART, INC., et. al.

CASE NUMBER:

ATTACHMENT (Number): 14

(This Attachment may be used with any Judicial Council form.)

DEMAND FOR JURY TRIAL

Plaintiff(s) demand(s) trial by jury of all issues so triable.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page ____ of ____

(Add pages as required)

SHORT TITLE: DONNA LIMA vs. WALMART, INC., et. al.

CASE NUMBER:

FIRST
(number)**CAUSE OF ACTION—General Negligence**

Page

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): DONNA LIMA, an individual.

alleges that defendant (name): WALMART, INC., a Delaware corporation; DOE 1 (STORE MANAGER); and DOES 2-50, inclusive.

☐ Does _____ to _____

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): or about April 2, 2022

at (place): or near 3055 Loughborough Dr., Merced, CA 95348

(description of reasons for liability):

On or about April 2, 2022 Plaintiff was lawfully on the premises of Defendants WALMART, INC., a Delaware corporation; DOE 1 (STORE MANAGER); and DOES 2-50, inclusive, located at or near 3055 Loughborough Dr., Merced, CA 95348. Plaintiff was walking within the subject premises when she stepped on an unmarked and/or unsecured plastic hanger and/or similar item on the floor causing her to slip and fall, thereby causing Plaintiff to endure severe injury and pain.

Plaintiff is informed and believes, and based upon such information alleges that Defendant DOE 1 (MANAGER) was a supervisor and/or manager of the subject premises at the time of Plaintiff's incident. Based on information and belief, Defendant DOE 1 (MANAGER) is now, and at all times mentioned in this complaint was, an adult resident of Merced County, California. It is believed that Defendant DOE 1 (MANAGER) was responsible for the maintenance of the subject premises at the time of Plaintiff's incident, was responsible to verify that there was in place a policy which provided for the maintenance of the subject premises according to industry standards, was responsible for the training and education of the subject premises' employees who were tasked with conducting the maintenance of the subject premises, and was responsible for verifying that the subject premises be maintained according to industry standards and sufficient policies and procedures.

At all times herein mentioned, defendants, and each of them, had sole and exclusive custody and control of the aforesaid premises and activities occurring at said premises, and owed a duty to this Plaintiff and others lawfully on said premises to keep said premises in a good and safe condition; contrary thereto, Defendants, and each of them, were negligent, careless and reckless in the ownership, care, control, maintenance, operation, leasing, management, caretaking, repairing, of said premises, in that they caused and permitted said premises to be and remain in a dangerous and unsafe condition in that defendants, and each of them, caused or permitted structures and/or components and/or other parts of said premises to be and remain deficient. In addition, Defendants, and each of them were negligent, careless and reckless in that they failed to properly warn of the dangerous condition, and in that they failed to properly protect the area of said dangerous condition.

Said Defendants, and each of them, fully and well knew, or should have known in the exercise of reasonable care, that the unmarked and/or unsecured plastic hanger and/or similar item in said establishment was in a dangerous and defective and unsafe condition, and a menace to Plaintiff and others lawfully on said premises.

By reason of the aforesaid negligence, carelessness and recklessness of Defendants, and each of them, as aforesaid, and as a direct and proximate result thereof, dangerously unmarked and/or unsecured plastic hanger and/or similar item that was not properly installed, maintained, cleaned and/or protected at said property causing Plaintiff to sustain the injuries and damages as hereinafter alleged.

SHORT TITLE: DONNA LIMA vs. WALMART, INC., et. al.

CASE NUMBER:

SECOND

CAUSE OF ACTION—Premises Liability

Page

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): DONNA LIMA, an individual.

alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.

On (date): or about April 2, 2022

plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury): On or about April 2, 2022 Plaintiff was lawfully on the premises of Defendants WALMART, INC., a Delaware corporation; DOE 1 (STORE MANAGER); and DOES 2-50, inclusive, located at or near 3055 Loughborough Dr., Merced, CA 95348. Plaintiff was walking within the subject premises when she stepped on an unmarked and/or unsecured plastic hanger and/or similar item on the floor causing her to slip and fall, thereby causing Plaintiff to endure severe injury and pain.

Prem.L-2. ☒ **Count One—Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names): WALMART, INC., a Delaware corporation; DOE 1 (STORE MANAGER); and DOES 2-50, inclusive.

☒ Does 1 to 50

Prem.L-3. ☐ **Count Two—Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names):

☐ Does _____ to _____Plaintiff, a recreational user, was ☐ an invited guest ☐ a paying guest.

Prem.L-4. ☐ **Count Three—Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names):

☐ Does _____ to _____

a. ☐ The defendant public entity had ☐ actual ☐ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.

b. ☐ The condition was created by employees of the defendant public entity.

Prem.L-5. a. ☐ **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):

☐ Does _____ to _____

b. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are ☐ described in attachment Prem.L-5:b ☐ as follows (names):

EXHIBIT B

ELECTRONICALLY FILED
 Merced Superior Court
 8/2/2024 12:57 PM
 Amanda Toste
 Clerk of the Superior Court
 By: Brandon Chow, Deputy

David Davidson, Esq. (SBN 215969)
ddavidson@ohaganmeyer.com
 Pilar Torres, Esq. (SBN 341732)
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Attorneys for Defendant,
 WALMART, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF MERCED**

DONNA LIMA, an individual,

 Plaintiff,

vs.

WALMART, INC., a Delaware corporation;
 DOE 1 (STORE MANAGER); and DOES 2-
 50, inclusive,

 Defendants.

Case No. 24CV-01205

Assigned For All Purposes To:
 Hon. Judge Brian McCabe
 Courtroom: 8

**DEFENDANT WALMART, INC.'S
 ANSWER TO PLAINTIFF'S
 COMPLAINT**

Complaint Filed: 03/19/2024
 Trial Date: None Set

Defendant WALMART, INC. ("Defendant"), by and through its attorneys, answers
 Plaintiff DONNA LIMA's Complaint ("Complaint") in this action as follows:

GENERAL DENIAL

Defendant denies both generally and specifically each and every allegation in said
 unverified complaint and the whole thereof, including a denial that Plaintiff has been or will be
 injured or damaged whether in the manner alleged, or in any other manner or sum, or at all, as
 permitted by California Code of Civil Procedure § 431.30(d). In further response to Plaintiff's
 Complaint, Defendant denies that Plaintiff has sustained any injury, damage, or loss, by reason of

any act or omission of Defendant or its agents or employees.

FIRST AFFIRMATIVE DEFENSE

1. The Complaint, and each and every purported cause of action contained therein, fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Each cause of action asserted in Plaintiff's Complaint is barred by the statute of limitations as set forth in Code of Civil Procedure §§335.1, 337.1, 337.15, and 340.

THIRD AFFIRMATIVE DEFENSE

3. Defendant contends that Plaintiff was concurrently and contributorily negligent in and about the matters referred to in said Complaint on file herein, and that said carelessness and negligence on Plaintiff's own part proximately and directly contributed to and caused the injuries, loss, and damages complained of by Plaintiff, if any there were.

FOURTH AFFIRMATIVE DEFENSE

4. Defendant contends that the injuries and damages complained of by Plaintiff, if any there were, were either wholly or in part proximately caused by negligence or other wrongful acts or omissions of persons or entities other than answering Defendant, and that said negligence or wrongful acts or omissions either are imputed to Plaintiff by reason of his relationship with said persons or entities, or comparatively reduce the proportion of negligence and corresponding liability of answering Defendant, if any, which liability is specifically denied.

FIFTH AFFIRMATIVE DEFENSE

5. Defendant contends that if liability is assessed against it, pursuant to Civil Code § 1431 et. seq., Defendant shall be liable only for the amount of non-economic damages allocated to it in direct proportion to the percentage of fault assessed against it by the trier of fact and requests that a separate judgment be rendered against it for that amount; but that Defendant in setting forth this affirmative defense makes no admission that it is liable to Plaintiff in any amount or in any proportion; and Defendant, in setting forth this affirmative defense, make no admission that Plaintiff has been damaged in any sum or sums at all.

///

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate his damages, if any there were, and that this failure to mitigate damages alone aggravated any damages or injuries to Plaintiff, if any, and therefore precludes or reduces recovery against answering Defendant.

SEVENTH AFFIRMATIVE DEFENSE

7. Defendant contends that Plaintiff knew, or in the exercise of reasonable care, should have known of the risks and hazards involved in the undertaking in which she engaged, but nevertheless and with full knowledge of these things, did fully and voluntarily consent to assume the risks and hazards involved in the undertaking.

EIGHTH AFFIRMATIVE DEFENSE

8. Defendant contends that pursuant to Government Code §830.2 and its progeny the risk, if any, created by the alleged dangerous condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

NINTH AFFIRMATIVE DEFENSE

9. Defendant contends that the events, injuries, losses, and damages, if any, complained of were the result of an unavoidable accident insofar as answering Defendant is concerned and occurred without any negligence, want of care, default or other breach of duty to Plaintiff on the part of answering Defendant.

TENTH AFFIRMATIVE DEFENSE

10. The provisions of the "Fair Responsibility Act of 1986" (commonly known as Proposition 51) Civil Code §§ 1430, 1431, 1431.1, 1431.2, 1431.3, 1431.4, 1431.5 and 1432 are applicable to this action to the extent that Plaintiff's injuries and damages, if any, were legally caused or contributed to by the negligence or fault of persons or entities other than answering Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

11. Defendant contends that any and all conduct of which Plaintiff complains, and which is attributed to answering Defendant, or its agents or employees was a just and proper exercise of management discretion on the part of answering Defendant and its agents and employees undertaken for a fair and honest reason and regulated by good faith under the circumstances then existing.

TWELFTH AFFIRMATIVE DEFENSE

12. Defendant contends that plaintiff's cause of action for premises liability is barred because Defendant did not have actual notice of the condition within sufficient time before the alleged injury to provide a reasonable opportunity to protect against it.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Defendant contends that plaintiff's cause of action for premises liability is barred because Defendant did not have constructive notice of the condition within sufficient time before the alleged injury to provide a reasonable opportunity to protect against it.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Defendant contends that plaintiff failed to exercise reasonable and ordinary care, caution, or prudence for plaintiff's own safety in order to avoid the alleged incident. The resulting injuries and damages, if any, sustained by plaintiff were proximately caused and contributed to by the negligence of plaintiff, in that any possible danger with regard to the accident was open and obvious to anyone using reasonable care.

FIFTEENTH AFFIRMATIVE DEFENSE

15. At the time and place of the occurrence alleged in the complaint, plaintiff failed to exercise ordinary care on his own behalf for his own safety. That negligence caused the injury and damage, if any, that she sustained. Consequently, plaintiff's right to recover should be diminished by his proportional share of fault.

Lastly, this answering Defendant presently does not have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. This answering Defendant reserves its rights to assert additional

affirmative defenses in the event that the discovery indicates they would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of the Complaint;
2. That judgment be entered against Plaintiff and in favor of Defendant on all causes of action;
3. For attorneys' fees and costs of suit incurred in defense of this action; and
4. For such other, further relief, as this Court may deem just and proper.

DATED: August 2, 2024

O'HAGAN MEYER

By:



David Davidson, Esq.
Pilar Torres, Esq.
Attorneys for Defendant,
WALMART, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am over the age of eighteen years and not a party to the within action. I am employed by O'HAGAN MEYER LLP, whose business address is 4695 MacArthur Ct., Suite 900, Newport Beach, CA 92660.

On **August 2, 2024**, I served the within document(s) described as: **DEFENDANT WALMART, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT** on the parties in said action as follows:

SEE SERVICE LIST

☐ **BY MAIL** (CCP § 1013) - I caused the documents described above to be deposited for processing in the mailroom in our offices. I am "readily familiar" with the firm's practices of collection and processing correspondence for mailing. It is deposited with the U. S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

☐ **BY FAX:** (CCP § 1013 (e); CRC 2.306 (a) (b)) – I caused such document(s) to be electronically transmitted by facsimile to the respective fax number(s) of the party(ies) as stated on the attached Service List.

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification listed herein on this date from agurzenski@ohaganmeyer.com. I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 2, 2024**, at Los Angeles, California.



Amber Gurzenski

SERVICE LIST

Lima, Donna v. Walmart, Inc.

Merced Superior Court Case No. 24CV-01205

O'Hagan Meyer File No.: 2967-40667

Lauren A. Landau, Esq.
Downtown LA Law Group

Attorneys for Plaintiff
Donna Lima

910 Broadway
Los Angeles, CA 90015

Tel: 213-389-3765

Fax: 877-389-2775

lauren@downtownlalaw.com

EXHIBIT C

1 **LAUREN A. LANDAU, Esq. – State Bar No. 344029**

2 **DOWNTOWN L.A. LAW GROUP**

3 910 S. Broadway

4 Los Angeles, CA 90015

5 Tel: (213) 389-3765

6 Fax: (877) 389-2775

7 Email: lauren@downtownlalaw.com

8 Attorneys for Plaintiff

9 DONNA LIMA

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF LOS MERCED**

12 DONNA LIMA, an Individual

Case No.: 24CV-01205

13 Plaintiff,

STATEMENT OF DAMAGES

14 v.

15 WALMART, INC., a Delaware corporation;
16 DOE 1 (STORE MANAGER); and DOES 2-
17 50, inclusive.

18 Defendants.

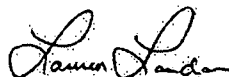
19 Plaintiff DONNA LIMA, an individual, hereby provides to Defendants the following
20 Statement of Damages:

- | | | |
|------------------------|--------------|----------------|
| 21 1. General Damages: | In excess of | \$1,000,000.00 |
| 22 2. Special Damages: | In excess of | \$1,000,000.00 |

23 Plaintiff reserves the right to amend this Statement of Damages at a later time, as
24 Discovery develops.

25 DATED: July 22, 2024

DOWNTOWN L.A. LAW GROUP

26 

27 _____
28 Lauren A. Landau, Esq.
Attorney for Plaintiff
DONNA LIMA

Downtown L.A. Law Group
910 S Broadway
Los Angeles, CA 90015

CERTIFICATE OF SERVICE

I am over the age of eighteen years and not a party to the within action. I am employed by O'HAGAN MEYER LLP, whose business address is 4695 MacArthur Ct., Suite 900, Newport Beach, CA 92660.

On **August 14, 2024**, I served the within document(s) described as:

DEFENDANT WALMART INC.'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§1332, 1441, 1446 (DIVERSITY) AND DECLARATION OF PILAR TORRES, ESQ.

on the parties in said action as follows:

☐ **BY ELECTRONIC TRANSMISSION:** The undersigned hereby certifies that on 8/14/2024, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the Court's CM/ECF system, which sent notification to all counsel of record, who are deemed to have consented to electronic service via the CM/ECF system.

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification listed herein on this date from agurzenski@ohaganmeyer.com. I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (FEDERAL) I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on **August 14, 2024**, at Los Angeles, California.

/s/ Amber Gurzenski
Amber Gurzenski

SERVICE LIST

Lima, Donna v. Walmart, Inc.

O'Hagan Meyer File No.: 2967-40667

Lauren A. Landau, Esq.

Attorneys for Plaintiff

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